

Testimony Regarding House Bill 1012
House Appropriations Committee
Human Resources Division
Representative Jon Nelson, Chair
January 25, 2021

Good Morning Chairman Nelson, members of the House Appropriations Committee, my name is Scott Burtsfield, and I am a member of the North Dakota Association of Community Providers and the Executive Director for the Vocational Training Center, a licensed service provider for people with intellectual and developmental disabilities, located in Fargo, North Dakota. I want to first thank you for the opportunity to speak to you about House Bill 1012.

As most of you are aware, in 2018 a new payment system was implemented that forever changed the landscape regarding how North Dakota pays for services to those providing care and support for individuals with Intellectual and Developmental Disabilities. The implementation of this new system denoted a culmination of research, design and collaboration that intended to impartially, efficiently, and soundly allocate resources for the state's most vulnerable citizens.

Now, a couple of years into the new system, we realize our task is not quite completed. We still have work to do. We understand that there remain issues to be resolved and changes to be made. And we're doing it.

For instance, community providers, working diligently and collaboratively with Developmental Disabilities Division leadership, have recently been addressing deficiencies pertaining to inadequate reimbursement rates for services such as Day Habilitation, Prevocational Training and Small Group Employment Supports.

However, other matters will need further scrutiny as we move forward. For example, in addition to inadequate rates, organizations delivering solely Day Support services experience even greater challenges regarding provider liability and the under-utilization of expected and contracted services.

These challenges become especially evident in matters of contracted attendance for supported individuals versus actual attendance. Basically, this means that whether supported individuals attend their Day programs or not, for whatever reason, providers of Day Services remain responsible for providing 100 percent of the staffing, resources, etc. without compensation for the services and expenses they incur based on the expected attendance.

Though the issue was evident at the onset of our payment system over two years ago, this flaw became especially palpable throughout the COVID-19 pandemic where smaller

providers and specialized providers of Day and Family Supportive Services were disproportionately impacted for many of the above-mentioned reasons.

Another concerning COVID casualty that will need further examination, by all vested parties, pertains to matters of choices and restrictions for individuals with Intellectual/Developmental Disabilities in our state.

Throughout this pandemic there were too many instances in which supported individuals were confined to their residence for extended periods of time – against their will, choice, or volition. While certain situations warranted quarantining for obvious health and safety reasons, there were also many instances in which the “lockdowns” were unwarranted and became harmful. Harmful to an individual’s mental health, harmful to their employment placement, and harmful to their sense of being and self-worth. It is now all too easy to cite the many situations in which we found the cure to be worse than the disease.

We will see these types of negative effects grow for many of the supported individuals served throughout North Dakota. However, this time it will not come in the form of COVID-19. It will be due to the federal elimination of Section 14(c) of the Fair Labor Standards Act (FLSA) which allows employers to pay wages below the federal minimum to employees who have significant disabilities.

While this is a highly controversial topic, with very valid points on both sides of the issue, there are many instances in which the utilization of subminimum wages creates meaningful employment opportunities for people with very significant disabilities. It is widely accepted that work is a valued activity in our society that promotes independence and enables individuals to participate in the whole community experience.

However, many with significant disabilities experience limited productivity which too often translates to limited job opportunities. Many deadline-driven or task-driven employers cannot look past the limited productivity or nature of the disability in their hiring decisions to realize they are passing by individuals that are tremendous assets to any work environment and desire to use their skills and abilities to the greatest extent possible.

Unfortunately, this may all become a moot point if employers will be required to pay the new proposed federal minimum wage. For one, such actions will not only destroy smaller organizations such as our beloved Vocational Training Center, but also create a very real scenario in which individuals with the most significant disabilities would likely never be offered the opportunity to work at all.

As you can see, in our industry, there is no shortage of trials, tribulations, transformations and reforms. However, through it all, there has been one fundamental element to the success of the individuals we support. This has always been our Direct Support Professionals (DSPs).

The incredible Direct Support Professionals in our state literally give their blood, sweat and tears to provide support and care for the state's most vulnerable population. They are increasingly held to much higher standards in terms of what is expected of them in their day-to-day work. In the last nearly three years there have been increased standards, training requirements, data collection and entry...the list goes on. These expectations have been imposed upon them with implementation of many of the new rules, policies, and mandates that accompanied the implementation of the payment system.

As a show of appreciation for DSPs increasing roles, responsibilities, expectations, and hazardous job duties, the Governor is recommending our DSPs and our services for individuals with disabilities be treated as "less than." "Less than" his recommendations for increases in other industries, "less than" his support for other professionals, and "less than" state employees who do not face being hit, bit, kicked, covered in human excrement daily.

Therefore, I am asking you to please cast aside the Governor's recommendation and support NDACP's request to leave provider services rates unscathed and support a 3% increase for each year of the biennium for service providers and the Direct Support Professionals we employ.

Again, I wish to thank Chairman Nelson and fellow members of the House Appropriations Committee for the opportunity to speak to you about House Bill 1012. I would be happy to answer any questions.

Scott Burtsfield, Executive Director
The Vocational Training Center

scott@fargovtc.org

(701) 551-3149